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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Klaus-Dieter Nehren, et al.  
Serial No. : 10/055,658  
Filed : January 23, 2002  
For : APPARATUS FOR EMPTYING A HOSE BAG  
Art Unit : 3754  
Examiner : Joseph A. Kaufman

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May 3, 2005

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL PURSUANT TO 37 CFR § 41.37

Sir:

This is an appeal from the final rejection of an Examiner of Art Unit 3754

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1. REAL PARTY IN INTEREST

The instant application is owned by Heraeus Kulzer GmbH & Co. KG, record owner hereof.

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## 2. RELATED APPEALS AND INTERFERENCES

The undersigned is not aware of any appeals, interferences, reexaminations, infringement actions or the like in any related applications.

## 3. STATUS OF CLAIMS

The claims pending in this application are claims 1-6, and all of said claims are on appeal.

## 4. STATUS OF AMENDMENTS

The last claim amendment was the amendment under 37 C.F.R. 1.114 filed on February 27, 2004, and that amendment was entered. There are no outstanding amendments.

## 5. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 1 relates to a novel apparatus for emptying a hose bag comprising a cap-like mating part (# 2 in Fig. 1) fixed on one end of the bag, which has a pipe-shaped outlet opening (#3 in Fig. 1) and a helical cutting device comprising a double-edged helix-shaped cutting blade (#4 in Fig. 1) arranged therein for opening the hose bag (page 2, lines 6-10).

Appellants' apparatus comprises a cap-like mating part which is fixed on one end of a hose bag and which has a pipe-shaped outlet opening with a cutting device having a helical cutting blade arranged therein. Notably, the apparatus is attached directly to the bag (page 3, lines 23-25; Fig. 1), and does not require insertion of the bag itself into a special container.

The helix-shaped cutting blade enables the device to produce an S-shaped cut in a hose bag, which, even when the bag is made from a film with poor elasticity or very high tear propagation resistance, produces a large and reproducible opening without causing parts of the film to become separated and removed together with the content of the hose bag (page 4, last paragraph).

#### 6. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

The grounds for rejection to be reviewed on appeal is the rejection of claims 1-6 under 35 U.S.C. 103(a) as obvious over King et al. (U.S. 5,429,273) in view of DE 38 73 178 to Morel (equivalent to U.S. 4,898,293).

#### 7. ARGUMENTS

King discloses a dispenser for flowable materials, which comprises a container 31 (Appellants' device does not require a container), into which pillow shaped pouch 52 having ears (col. 1, lines 10-11; col. 4, line 8, Fig. 3a) [not a hose bag] is inserted [Appellants' apparatus does not require the insertion of the hose bag into anything!]. King's pouch must have "ears", which overlap the sides of container 31, so that lid 35 can be closed upon them and by clamping the ears between the lid and the sides of the container, hold the pouch taut (col. 4, lines 16-24).

Lid 35 has a threaded conduit 41 therein (col. 4, line 53), into which ramped sleeve 58 is screwed (col. 5, lines 2-3). Ramped sleeve 58 forms a bore 66 for the insertion and retention of nozzle 60. The end of bore 66 has a widened bore 66 & 67. Nozzle 60 has a corkscrew tip 69 which has a thread 70 ending in a piercing tip 71 (col.

5, lines 4-7). Note that the tip 69 is an integral part of the nozzle, so that material can flow through the tip into the nozzle, and also note that piercing tip 71 is part of the thread 70 (Fig. 6). Piercing tip 71 is a sharp point on the end of thread 70 to help "start" the thread; it is not a knife or a blade.

In operation, nozzle 60 is twisted and pushed in such a manner that piercing tip 71 pierces the bag inside the container, and as corkscrew tip 69 is rotated, the film material of the pouch is engaged by the corkscrew and drawn around a tapered portion 77 of nozzle 60 (col. 5, lines 27-29). Nozzle 60 is then drawn away from the pouch by the threads of the corkscrew to trap the film between the threads 70 and 75 and the bore 68 whereby the film becomes nipped between the threads and the bore, so that the opening formed in the bag is maintained, and leakage around the bore is prevented.

King therefore does not teach or suggest a cap like mating part fixed on one end of a hose bag or a double-edged helix-shaped cutting blade arranged in the outlet of the cap-like mating part. King's lid clamps the ears of the pouch against the sides of the container, and is not "fixed" to the pouch. More specifically, King's lid must work in cooperation with the side of King's container to clamp the ears of the pouch between itself and the sides of the container. King's lid cannot therefore fairly be seen as being "fixed" to the Pouch. In addition, King's corkscrew nozzle tip is clearly not, and clearly cannot be, a double-edged helix-shaped cutting blade.

The Examiner turns to Morel for a helix-shaped cutting blade, and would

substitute Morel's helix-shaped cutting blade for King's "cutting device 42". First of all, there is no such thing as a "cutting device 42" in King. The part identified by "42" in King is a spout. There is a nozzle in the spout, and the end of the nozzle bears a corkscrew tip 69 having a piercing tip 71 as part of its thread 70. It is difficult to tell exactly what part of King's device the Examiner would replace with Morel's cutting blade.

It should be noted, however, that an essential feature of King's device is the combination of the corkscrew tip and the widened portions 67 and 68 of the bore surrounding the nozzle. As the corkscrew draws the cut portion of the pouch into the bore, the cut portion of the pouch becomes wedged or nipped between the nozzle and the bore.

If Morel's cutting blade were substituted for King's corkscrew tip of the nozzle, or for the piercing tip of the thread of the nozzle, King's device would not operate in the way it is designed to, and any person skilled in the art would know that. More specifically, the cut portion of the pouch would not be drawn into the space between the nozzle and the bore and held therein. Morel's cutting blade is not a pointed tip and could not "start" the screwing of the corkscrew into the pouch material, and would not allow the corkscrew to "grab" the film, which is an essential feature of King's device. Therefore the substitution proposed by the Examiner would be contrary to the inventive concept of the King reference; and there would be no motivation to make this substitution. Such a substitution would destroy the inventive concept of the King

reference, and would serve absolutely no purpose whatsoever, within the context of the King reference. Such a substitution would, in fact, destroy King's device.

Furthermore, even if this substitution were made, Appellants' device would not be arrived at, as the result would not be "a cap-like mating part fixed on one end of said hose bag...having a pipe-shaped outlet....and a helical cutting blade arranged therein..."

#### 8. CONCLUSION

Accordingly, no combination of King and Morel could ever lead to Appellants' novel apparatus, and the rejection of claims 1-6 under 35 U.S.C. 103(a) as obvious over King et al. (U.S. 5,429,273) in view of DE 38 73 178 to Morel (equivalent to U.S. 4,898,293) should now be **REVERSED**.

Appellant is:

☐ a small entity

☒ other than a small entity

It is requested that the fee for the filing of the Brief on Appeal be charged to the undersigned's Deposit Account No. 14-1263.

Please charge:

☐ \$ 250.00 for small entity

☒ \$500.00 for other than small entity.

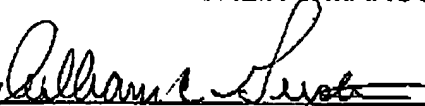
CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, appellant requests that this be considered a petition therefor. Please charge the required Petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess to our Deposit Account No. 14-1263.

Respectfully submitted,  
NORRIS McLAUGHLIN & MARCUS, P.A.

By   
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I hereby certify that this correspondence is being transmitted via facsimile, no. 703-872-9308 to the United States Patent and Trademark Office, addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 3, 2005.

By   
William C. Gerstenzang

## 9. CLAIMS APPENDIX

The claims are appeal read as follows:

Claim 1. Apparatus for emptying a hose bag comprising a cap-like mating part fixed on one end of said hose bag, said cap-like mating part having a pipe-shaped outlet opening (3) and a helical cutting device comprising a double-edged helix-shaped cutting blade arranged therein for opening the hose bag.

Claim 2. Apparatus in accordance with claim 1, wherein the blade is rotatably displaceable into the outlet opening and in the hose bag direction through an insertable nozzle.

Claim 3. Apparatus in accordance with claim 1, wherein the blade is lockable in position.

Claim 4. Apparatus according to claim 2, wherein the nozzle seals against the inner wall of the pipe-shaped outlet opening.

Claim 5. Apparatus according to claim 3, wherein the nozzle seals against the inner wall of the pipe-shaped outlet opening.

Claim 6. Apparatus in accordance with claim 2, wherein the blade is lockable in position.



**10. EVIDENCE APPENDIX**

No evidence under §§ 1.130, 1.131, or 1.132 has been submitted.

11. RELATED PROCEEDINGS APPENDIX

There have been no decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 CFR 41.37